

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 5, 2003 at
11:02 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 385, 2/13/2003; HB 403, 2/8/2003
Executive Action:

{Tape: 1; Side: A}

HEARING ON SB 385

Sponsor: SENATOR JEFF MANGAN, SD 23, GREAT FALLS

Proponents: John Kramer, Great Falls Development Corporation and High Plains Financial; Ike Kaufman, Great Falls Development board member and past president of Great Falls Chamber of Commerce; Ronda Carpenter, Great Falls Area Chamber of Commerce

Opponents: None

Opening Statement by Sponsor:

SENATOR JEFF MANGAN, SD 23, GREAT FALLS, shared this venture capital bill had been heard before transmittal, but he was happy to have the opportunity to have another hearing on it.

Proponents' Testimony:

John Kramer, Great Falls Development Corporation and High Plains Financial, provided written testimony, **EXHIBIT**(bus46a01).

Ike Kaufman, Great Falls Development board member and past president of Great Falls Chamber of Commerce, said he has never been as excited about economic development as they are now, because Mr. Kramer has put together a program that he thinks is functional and will allow growth.

Ronda Carpenter, Great Falls Area Chamber of Commerce, reminded the committee that the government does much better helping economic development in the private sector by encouraging it with tax credits rather than attempting to have the government do it. This is a positive move forward, and she hoped that the committee would approve SB 285.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE referred to Mr. Kramer's explanation of Tier 1 and Tier 2. Mr. Kramer said Congress created Small Business Investment Companies (SBIC) that are primarily second tier investors. He also stated that they do not have SBIC servicing in this area, but D.A. Davidson is currently working on that with the Board of Investments. They also discussed experienced fund managers being a necessity.

SEN. SAM KITZENBERG asked **SEN. MANGAN** if he had plans to add safeguard amendments to bill. **SEN. MANGAN** talked about proposed changes by the Department of Commerce. He is not in agreement with what they want to do with his bill.

{Tape: 1; Side: B}

He concluded by saying they will probably have an amendment or two to quell risk concerns, but not necessarily the amendments brought forth to him.

SEN. KITZENBERG asked **Mr. Poole** how he felt about this bill, if the risks are still there and what are some of those risks. **Mr. Poole** described some of the concerns his department had with the bill as it was introduced. He wants to make sure the investment company doesn't have a majority interest in the investment they were making. The second thing is the fact that the state of Montana would have a position on the board of directors of the investment firms. He thought that, as an agency that is overseeing the act and making sure it is being implemented properly, there is some concern about conflict of interest. Over the years, they have seen some concern from the state of Montana from a liability standpoint. **SEN. KITZENBERG** asked **Mr. Poole** to elaborate on abuses that have occurred in the past. He replied the 49 percent control or ownership of investments. One of the problems with the Montana Capital Company Act was there wasn't a provision in the statute that required managers of the investment firms to be professional managers. What you had was a group of people in Montana who wanted to form a capital company and really didn't have the experience to do it properly. Many problems arose from that scenario.

SEN. VICKI COCCHIARELLA wanted **Mr. Poole** to justify the fiscal note. He answered that **Mr. Kramer** could be correct. It could be that there could be two to three funds formed in Montana. There is nothing in the statute that minimizes the number of funds that could be created. In addition, the way the statute is written, it requires that a member of the Department of Commerce sit on the board of each of the investment funds. He explained the further workload to his department. There's quite a bit of work that would go along with this bill.

SEN. DON RYAN wanted to know if **Mr. Kramer** had the opportunity to review the fiscal note. **Mr. Kramer** would review the fiscal note and get back to the committee.

CHAIRMAN DALE MAHLUM asked if banks can be partners. **Mr. Kramer** replied banks usually put money in as a holding company. There are some limitations for the banks.

SEN. SPRAGUE complimented **Mr. Kaufmann** on the positive thinking manner of doing business that Billings shows as opposed to Great Falls. He encouraged **Mr. Kaufman** to keep the pressure on and to not allow regulatory agencies beat them down.

Closing by Sponsor:

SEN. MANGAN pointed out that he planned to sit down with the Department of Commerce and the Department of Revenue to discuss any technical issues. The amendments, he felt, were a little bit overboard and not worthy of discussion at the hearing, but he does plan to address those issues. Second, this is a bipartisan bill; it's not political; it's brought to the committee from the great folks of Great Falls and D.A. Davidson. He said that **REP. MC KENNEY** and he were moving forward in a non-political manner, because this bill is an important tool, not only for their community but for every community in the state.

HEARING ON HB 403

Sponsor: REPRESENTATIVE JIM KEANE, HD 36, BUTTE

Proponents: Jerry Driscoll, AFL/CIO; Bob Pavlovich, IBEW 233; Gene Fenderson, Montana Progressive Labor Caucus

Opponents: Dick Anderson, Dick Anderson Construction; Brad Talcott, James Talcott Construction; Cary Hegreberg, Montana Contractors Association

Informational Witnesses:

John Andrew, Department of Labor and Industry

Opening Statement by Sponsor:

REPRESENTATIVE JIM KEANE, HD 36, BUTTE, brought what he said is a relatively simply bill. It's already in statute that 50 percent of the work performed in Montana shall be by Montana workers. Up until now, the Department of Labor has overseen these rules and he would like to make sure that 50 percent of the workers will be Montana residents. There are exclusions for some big projects when there aren't available workers from Montana. He pointed out that 50 percent of the hours could be construed as part of the bill, but they certainly don't want Montana's skilled workers to not have the opportunity to work on these projects.

Proponents' Testimony:

Jerry Driscoll, AFL/CIO, shared that the Department of Labor was going to write an administrative rule that 50 percent of the hours worked must be performed by Montana workers. He asked how could anyone tell if they were. At the end of the job, if only 49 percent of the hours worked had been by Montana workers, he wanted to know what could be done about it at that point. The job would be done. This bill is simply a clarification.

Bob Pavlovich, IBEW 233, agreed with **REP. KEANE** and the AFL/CIO that there are a lot of qualified workers in the Montana workforce and they would like to see them working first in at least 50 percent of the jobs.

Gene Fenderson, Montana Progressive Labor Caucus, also stood in support of HB 403 and believed it brings clarification to present law.

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Opponents' Testimony:

Dick Anderson, Dick Anderson Construction, didn't have a problem with the idea of 50 percent of the workers on a project being from Montana. What he did have a problem with was the language on line 16 where they talk about sub-contractors. When his company worked on the capitol building restoration, he would have been in violation on probably four different sub-contractors he had to bring in from out of state because there are not people in the state who did some of the specialty work. He discussed the problem with some of the big box or hotel construction companies that come in from out of state who even call in illegal aliens to do the framing or masonry work. This bill doesn't address any of those issues. He discussed Little Bacon-Davis and how it protects those in this state. He stated a bill was being passed that has never been a problem and was 100 percent against taking work away from Montana residents.

Brad Talcott, James Talcott Construction, stood as an opponent of the bill. He saw a number of problems with the bill. First of all, he doesn't even know why the bill was necessary and that there isn't a problem now. There are certain specialty contractors that either the equipment or specialty required of that trade makes it necessary to receive quotes from outside of Montana because they're not available in Montana. One of the problems he sees are in enforcement and fiscal issues that go along with it. He discussed certain trades going back and forth across the borders of the state. He asked who would determine

how much more the contractor would have to absorb when drawing strictly from Montana workers or sub-contractors and travel and distance involved. Who would pay the additional costs of bringing a Montana contractor the long distance when there could be a contractor just over the border that is traditionally used?

Cary Hegreberg, Montana Contractors Association, opposed the bill on philosophical grounds. He argued that if every state in the country and every state that surrounded Montana had similar legislation, Montana would be the net loser. There is more construction to be done in other surrounding states than in Montana. It just seemed that in this enlightened era, there ought to be more of an attitude of free trade and letting the markets work and letting those contractors who are most competitive deliver the best value to the taxpayer. Second, he had a question about how this bill could be enforced. The current law cites a definition of bonafide resident, which he read to the committee, "A bonafide resident of Montana is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make this the person's home." He asked the committee who would make that call on the job site. **Mr. Hegreberg** offered his amendments consistent with what the Department of Labor was moving toward last summer in rule making, **EXHIBIT (bus46a02)**.

Informational Witness Testimony:

John Andrew, Department of Labor and Industry, offered a couple of informational pieces for the committee. First of all, the 50 percent preference is not an absolute preference. It doesn't apply to federally funded projects where the preference is prohibited. It applies to public works projects as opposed to private sector jobs. Over the years, the department seldom received any complaints. There is only case he could raise to the level of a complaint where his department actually went to a contracting agency and said that this particular out-of-state contractor is being so deliberate in circumventing the law that they thought the contracting agency, at its discretion, should withhold some fines. They set about rule making some time ago in his department. The rules they revised were extensive. They ended up with some 20 pages of rules. Contained in there was an attempt by the department to deal with the 50 percent issue. The 50 percent issue could be looked at in several different ways. One is that 50 percent of workers on the project be Montana residents, but the other way is that 50 percent of the labor be performed by Montana residents. That's what led to the rule

making. With suggestions that came to their commissioner at that point in time, the department proposed a rule that indicated that the 50 percent would be applied on a total man-hour basis on the project. At the time of the public hearing, there were approximately eight opponents to that proposal from organized labor as well as from some contractors. The Montana Contractors Association appeared and presented their comments on the proposed rule. Subsequent to that, in the written testimony that was submitted concerning the rule, they received 11 or 12 comments, all of which were opposed to the rule as it was being proposed by the department. With that, the department adopted the current way they have been enforcing the law, which is that 50 percent of the workers apply to each sub-contractor. They also adopted the rule that dealt with how the waiver provisions of this law would be applied. They recognized there were different ways that Section 409 could be interpreted and, essentially, that's what is before the committee right now. How best should this particular section of law be applied? He offered to answer questions the committee may have.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **Mr. Talcott** how long his company has been in business. The answer was for three generations. She then wanted to know if he was aware that this bill was passed in 1985. **Mr. Talcott** knew it had been around for a long time.

SEN. COCCHIARELLA stated to **Mr. Andrew** that there were several opponents to this legislation that said they didn't know how they would ever do this. This law, with words unchanged, was passed in 1985 and she no amendments to that section of the code since that time. She also noted that **Mr. Andrew** had said that there has been only one complaint since that time. **Mr. Andrew** answered that they get inquiries on that provision of the section. As part of the contracting process, the bid documents and specifications indicate that the 50 percent preference exists in Montana law. The general contractors who are signatory are aware of that from the beginning, but then as the project develops and the sub-contractors get involved, his department gets calls about the 50 percent preference. The calls are handled informally. He noted one particular case there was an out-of-state contractor who was aware of the provision and just wouldn't get 50 percent of the workforce up to Montana residents. He considered that a formal complaint. The issue that was mentioned later on was a project where they had an inquiry from a specialty contractor. In that particular case, his department addressed that as it was going forward in the rule making process. That's when the information came to their commissioner and they proposed the rule to address it on the hours on the whole project as opposed to the

workers hired by each contractor. **SEN. COCCHIARELLA** emphasized that it is very clear to her that the law and the rules are very clear and have been since 1985. She could see how easily enforceable they are. She wanted to know how his department could go back and undo something that was already finished. **Mr. Andrew** said it's a good question that remains unanswered.

Cary Hegreberg was asked by **SEN. COCCHIARELLA** if he was aware of any efforts to get rid of the language since the law went into effect in 1985 and what is so objectionable about wanting 50 percent of the people from Montana being employed on a project. He replied they thought they were working through this last summer in rule making. They thought the department was clarifying to their satisfaction that this statute was workable and did allow for specialty contractors to come in from out of state. His organization is responding to the same situation or potential situation as their critics. Some of it came from the project in Bozeman where the contractor and project were stalled. He argued it is a problem with the taxpayers. **SEN. COCCHIARELLA** again asked him why it is so objectionable to him that 50 percent of the workers be Montana residents. **Mr. Hegreberg** thought his reasons had been articulated and they don't think it is workable. He stated that **Mr. Anderson** had pointed out numerous cases in which specialty sub-contractors from out of state were necessary in order to complete a state-funded project. Depending on the outcome of this, the association's position on this issue may be to come back in two years and seek a repeal of this entire statute.

Mr. Anderson was then questioned by **SEN. COCCHIARELLA** on the same issue because she didn't feel **Mr. Hegreberg** had answered her question. **Mr. Anderson** stated he didn't have any trouble with the department. The problem he has is the new, added language. As far as he knew before, it didn't specifically call out sub-contracts. It was always 50 percent of the workers on a project, so his problem is with whether or not he is in violation of law if they bring in several specialists to do the work. **SEN. COCCHIARELLA** then asked if the language about sub-contractors or new language wasn't there, would he still have a problem with 50 percent of the workers being from Montana? He would not, because he usually averages about 90 percent Montana workers. It is just the specialty workers that concerned him.

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SEN. CAROLYN SQUIRES clarified with **Mr. Andrew** his previous explanation and who had to comply with a particular law. He had stated that the 50 percent preference law applies only to public works projects and not the public sector.

SEN. DON RYAN referred to the project in Bozeman that brought this issue to a head and asked **Mr. Hegreberg** if there was a problem because there was no way to resolve the Bozeman project. He replied that, in part, that is exactly what happened. The department was quite unclear as to what process in which to engage. In the meantime, the contractor agreed to advertise locally in the Bozeman area for workers who may be qualified to do asbestos abatement.

SEN. COCCHIARELLA asked **Mr. Driscoll**, since this law had been in effect since 1985 and there was an issue of a contractor doing asbestos abatement in Bozeman, are there asbestos abatement people in the state in quantity so someone could find those workers. **Mr. Driscoll** believed there are over a thousand Montana residents who have asbestos abatement licenses who are union and non-union.

CHAIRMAN DALE MAHLUM complimented **Mr. Anderson** on his common sense and referred to page 16. He wanted to know if using the word "preference" or "preferred" in that section would help him. **Mr. Anderson** said it would if he didn't have to go out and prove that 50 percent were hired. He didn't care if 70 percent of the workers have to be from Montana, but he has a problem when you go into individual sub-contractors.

Closing by Sponsor:

REP. KEANE stated this law has been in effect for 18 years and the committee is charged with whether or not they want Montana workers or hours. He contended hours would be unfair, because you could have skilled Montana workers not get the work and a contractor could bring in his own out-of-state workers for those positions and put in only unskilled Montana workers. The sub-contractor issue is very interesting, because it is already in the bill under line 22, subsection 1, according to **REP. KEANE**. He encouraged the committee to concur in HB 403.

ADJOURNMENT

Adjournment: 10:42 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus46aad)